

REMITTANCE ADVICE

FORM 159

| | |
|-----------------------------|------------------|
| (1) LOCKBOX # 979094 | SPECIAL USE ONLY |
| | FCC USE ONLY |

SECTION A - PAYER INFORMATION

| | | |
|---|-----------------|--|
| (2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Dickstein Shapiro LLP | | (3) TOTAL AMOUNT PAID (U.S. Dollars and cents) |
| (4) STREET ADDRESS LINE NO. 1 1825 Eye Street, NW | | |
| (5) STREET ADDRESS LINE NO. 2 | | |
| (6) CITY Washington | (7) STATE DC | (8) ZIP CODE 20006-5403 |
| (9) DAYTIME TELEPHONE NUMBER (include area code) (202) 420-2200 | | (10) COUNTRY CODE (if not in U.S.A.) |

FCC REGISTRATION NUMBER (FRN) REQUIRED

| | |
|----------------------------------|-------------------|
| (11) PAYER (FRN) 0004-2711-10 | (12) FCC USE ONLY |
|----------------------------------|-------------------|

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

| | | |
|---|------------------|--------------------------------------|
| (13) APPLICANT NAME APCC Services, Inc. | | |
| (14) STREET ADDRESS LINE NO. 1 625 Slaters Lane | | |
| (15) STREET ADDRESS LINE NO. 2 Suite 104 | | |
| (16) CITY Alexandria | (17) STATE VA | (18) ZIP CODE 22314 |
| (19) DAYTIME TELEPHONE NUMBER (include area code) (703) 739-1322 | | (20) COUNTRY CODE (if not in U.S.A.) |

FCC REGISTRATION NUMBER (FRN) REQUIRED

| | |
|--------------------------------------|-------------------|
| (21) APPLICANT (FRN) 0006-8947-07 | (22) FCC USE ONLY |
|--------------------------------------|-------------------|

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

| | | |
|-------------------------------------|--------------------------------|--------------------------------|
| (23A) CALL SIGN/OTHER ID | (24A) PAYMENT TYPE CODE CIZ | (25A) QUANTITY 3 x \$190.00 |
| (26A) FEE DUE FOR (PTC) \$570.00 | (27A) TOTAL FEE \$570.00 | FCC USE ONLY |
| (28A) FCC CODE 1 | | (29A) FCC CODE 2 |
| (23B) CALL SIGN/OTHER ID | (24B) PAYMENT TYPE CODE | (25B) QUANTITY |
| (26B) FEE DUE FOR (PTC) | (27B) TOTAL FEE | FCC USE ONLY |
| (28B) FCC CODE 1 | | (29B) FCC CODE 2 |

SECTION D - CERTIFICATION

CERTIFICATION STATEMENT
I, Robert F. Aldrich, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE Robert F. Aldrich DATE February 9, 2009

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____

ACCOUNT NUMBER _____ EXPIRATION DATE _____

I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described.

SIGNATURE _____ DATE _____

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW Washington, DC 20006-5403

ACCOUNT NUMBER

2000020300220

Date

02/09/09

Check No.

361155

Description & Invoices That This Check is Written For

| | | | |
|----------|----------|--------|---|
| cr020309 | 02/03/09 | 570.00 | Payment of FCC filing fees for West Star Telecommunications, LLC, et al. Formal Complaint. |
|----------|----------|--------|---|

FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU
P.O. BOX 979094
ST. LOUIS, MO 63197-9000

Check Amount Total

570.00

THIS CHECK IS VOID WITHOUT A GREEN & BLUE BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

| | | | |
|---|--|--|---------------------|
| DICKSTEIN SHAPIRO LLP 1825 Eye Street NW Washington, DC 20006-5403 | | Wachovia Bank, N.A. 1933 Main St. Charlotte, NC 28202 | Check No. 361155 |
| Date 02/09/09 | | Amount \$570.00 | |
| Pay to the order of FEDERAL COMMUNICATIONS COMMISSION ENFORCEMENT BUREAU P.O. BOX 979094 ST. LOUIS, MO 63197-9000 | | 2 Signatures Required if \$10,000 or Above <i>Donna B. Feeney</i> | |

⑈361155⑈ ⑆054001220⑆2000026568223⑈

FORMAL COMPLAINT INTAKE FORM

| |
|---|
| 1. Case Name: |
| APCC Services, Inc., Complainant, v. True LD, LLC, et al., Defendants. |
| 2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): |
| APCC Services, Inc. Phone: (703) 739-1322 |
| 625 Slaters Lane, Suite 104 Fax: (703) 739-1324 |
| Alexandria, VA 22314 |
| 3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): |
| See attached page. |
| 4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: |
| 47 U.S.C. Sections 201(b), 276(b) |

Answer (Y)es, (N)o or N/A to the following:

- Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.
- Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.
- Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:
- Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
- Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.
- Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).
- Y d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
- N e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
- N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:
- Y g. Complaint includes an information designation that contains:
- Y (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and
- Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and
- Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.
- Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
- Y i. Certificate of service is attached.
- Y j. Verification of payment of filing fee in accordance with 47 C.F.R. Section 1.1105(i)(c) is attached.
- N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.
- Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).
- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47 and 47 C.F.R. Section 1.735(d).
- Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies, required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- Y 14. If Complaint is by multiple complainants, it conforms with the requirements of 47 C.F.R. Section 1.723(a).
- Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- Y 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

Item 3

West Star Telecommunications, LLC
2470 Majestic Pkwy, #120
Tucson, AZ 85705
Tel.: (520) 629-4334

True LD, LLC
2470 Majestic Pkwy, #120
Tucson, AZ 85705
Tel.: (520) 629-4334

Global Access Telecom
2470 Majestic Pkwy, #120
Tucson, AZ 85705
Tel.: (520) 629-4334

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|----------------|
| In the Matter of |) | |
| |) | |
| APCC Services, Inc. (FRN 0006-8497-07), |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | File No. _____ |
| |) | |
| True LD, LLC, |) | |
| West Star Telecommunications, LLC, and |) | |
| Global Access LD, LLC, a/k/a Global Access |) | |
| Telecom, a/k/a Global Access, Inc. |) | |
| |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

FORMAL COMPLAINT

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006
Tel. (202) 420-2200
Fax (202) 420-2201

Attorneys for APCC Services

Dated: February 9, 2009

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|----------------|
| In the Matter of |) | |
| |) | |
| APCC Services, Inc. (FRN 0006-8497-07), |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | File No. _____ |
| |) | |
| True LD, LLC, |) | |
| West Star Telecommunications, LLC, and |) | |
| Global Access LD, LLC, a/k/a Global Access |) | |
| Telecom, a/k/a Global Access, Inc., |) | |
| |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

FORMAL COMPLAINT

1. APCC Services, Inc. ("APCC Services" or "Complainant") on behalf of, and as agent for, the payphone service providers ("PSPs") listed in Exhibit 1 attached hereto (the "Represented PSPs") and pursuant to Section 208 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 208, and Section 1.721 of the rules of the Federal Communication Commission ("FCC" or "Commission"), 47 C.F.R. § 1.721, submits this formal complaint against True LD, LLC ("True"), West Star Telecommunications, LLC ("West Star"), and Global Access LD, LLC, a/k/a Global Access Telecom, a/k/a Global Access, Inc. ("Global"). True, West Star, and Global are collectively referred to as "Defendant," a term which is intended to refer to each of them in their capacity as individual actors and any two or more of them to the extent they acted together as a common enterprise.¹

¹ To the extent that a specific reference is made to a particular Defendant entity and the matter addressed involved the acts of another of the Defendant entities, the reference should be deemed to have been made to the proper entity.

2. A single action against all of the Defendant entities² is permissible pursuant to 47 C.F.R. § 1.735(a) in light of the facts set forth in Section III.F. below.

3. This action relates to unpaid dial-around compensation owed by Defendant to the Represented PSPs, and other violations of the Commission's payphone compensation rules.

4. Pursuant to 1.718 of the Commission's rules, 47 C.F.R. § 1.718, this formal complaint relates back to (1) the informal complaint filed by APCC Services against Defendant on June 26, 2006, File No. EB-06-MDIC-0049 ("2006 Informal Complaint"), and (2) the informal complaint filed by APCC Services against Defendant on June 30, 2008, File No. EB-08-MDIC-0042 ("2008 Informal Complaint"). Copies of these informal complaints are attached hereto as Exhibit 2.

I. SUMMARY

A. Defendant's Violations of the Act

5. Defendant entities have been operated as a common enterprise, and indeed, as alter egos of one another, and therefore must be held jointly and severally liable for their violations of the Commission's compensation rules and the Act. As shown below, Defendant has violated Sections 201(b) and 276(b) of the Act by failing to pay payphone dial-around compensation due to the Represented PSPs for calls made from the Represented PSPs' payphones during the period beginning January 1, 2005, and ending September 30, 2008 (the "Complaint Period"), as required by Sections 64.1300 and 64.1310 of the Commission's rules. 47 C.F.R. §§ 64.1300, 64.1310. Defendant has made no payments at all to APCC Services or the Represented PSPs for any quarter of the Complaint Period.

² A filing fee is being paid for each of the Defendant entities, for a total amount of \$570.00.

6. In addition, Defendant has violated Sections 201(b) and 276(b) of the Act by failing to comply with the payphone call tracking, reporting, and system audit requirements of Sections 64.1310 and 64.1320 of the Commission's rules. 47 C.F.R. §§ 64.1310, 64.1320. Those rules require all carriers that complete dial-around calls from payphones to establish accurate payphone call tracking systems, to provide accurate quarterly reports identifying the calls completed from each payphone, to provide chief financial officer certifications as to the accuracy of their reports and compensation payments, and to conduct annual audits and file audit reports attesting to the adequacy of their compensation and tracking system ("System Audit Reports").

B. Damages

7. As recovery for the unpaid compensation owed by Defendant, APCC Services seeks damages in the amount of \$705,518.94, plus interest of \$209,931.88 through January 31, 2009, for a total of \$914,411.93. This amount is calculated by (1) multiplying the FCC-prescribed per-call compensation rate by the number of dial-around calls reported as delivered to Defendant each quarter from the Represented PSPs' payphones by Intermediate Carriers and (2) adding accrued interest on the amounts due for each quarter at the Commission-prescribed rate of 11.25% per year, from the date each compensation payment was due through January 31, 2009.

8. This approach to damages is appropriate because, due to Defendant's failure to comply with the Commission's call-tracking, reporting, and audit requirements, the Intermediate Carrier Reports are the only call data currently available to APCC Services and the Commission for the purpose of determining damages. See *APCC Services, Inc. v. Radiant Telecom, Inc. et al.*, Memorandum Opinion and Order, 23 FCC Rcd 8962, 8971-72 ¶ 30 (May 20, 2008) ("*Radiant*"). As discussed more fully below, Defendant may possess switch records that are sufficiently reliable to be used to develop an acceptable data point that could be used in conjunction with the data point provided by Intermediate Carrier Report data, using a method similar although not

necessarily identical to the approach the Commission used in *Radiant*. But, unless and until information that is acceptable becomes available to serve as a data point for a *Radiant*-type analysis, the damages to APCC Services and the Represented PSPs must be calculated based on the number of dial-around calls delivered to Defendant by Intermediate Carriers from the Represented PSPs' payphones.

9. In addition to the relief described above, APCC Services seeks an order compelling Defendant to come into compliance with the requirements of 47 C.F.R. §§ 64.1310 and 64.1320.

II. THE PARTIES

A. APCC Services

10. APCC Services is an agent of PSPs for the billing and collection of dial-around compensation. See Declaration of Ruth Jaeger ("Jaeger Decl.") at 1-2 (attached hereto as Exhibit 3). APCC Services has entered into the APCC Services Agency Compensation Agreement ("Agency Agreement") with each of the Represented PSPs. A sample Agency Agreement is attached hereto as Exhibit 4 (Agency Agreement).³ Each Represented PSP has also executed a Power of Attorney authorizing APCC Services to act on its behalf. A sample Power of Attorney is attached hereto as Exhibit 5 (Power of Attorney).⁴ Pursuant to the Agency Agreement and Power of Attorney, APCC Services is authorized to collect dial-around compensation on behalf of the Represented PSPs for the Complaint Period. See Exhibit 4 (Agency Agreement); Exhibit 5 (Power of Attorney).

³ Because of the sheer volume of the Agency Agreements, APCC Services has not attached copies of each individual Agency Agreement. APCC Services hereby affirms that it has such an agreement for each of the Represented PSPs. Exhibit 3 (Jaeger Decl.) at 2 ¶ 7.

⁴ Because of the sheer volume of the Powers of Attorney, APCC Services has not attached copies of each individual Power of Attorney. APCC Services hereby affirms that it has such an agreement for each of the Represented PSPs. Exhibit 3 (Jaeger Decl.) at 2 ¶ 7.

11. APCC Services represents as dial-around compensation agent, and thus the Represented PSPs constitute, slightly different sets of PSPs for each of the quarters in the Complaint Period. The Represented PSPs with respect to each quarter are listed, along with the ANIs for their respective payphones for which damages are sought, in a text file on the CD attached as Exhibit 1 (Represented PSP/ANI List). See Exhibit 3 (Jaeger Decl.) at 2 ¶ 6.

12. APCC Services' FCC registration number ("FRN") and contact information are as follows:

APCC Services, Inc. (FRN 0006-8497-07)
Attn: Ruth Jaeger, President
625 Slaters Lane, Suite 104
Alexandria, VA 22314
Tel: 703-739-1322
Fax: 703-739-1324

13. APCC Services is represented in this matter by:

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, D.C. 20006
Tel: 202-420-2200
Fax: 202-420-2201

B. Defendant Entities

14. Each of the Defendant entities is a common carrier that provides or provided interexchange telecommunications service.

15. The contact information for all of the Defendant entities is the same and is as follows:

Jeffrey Larsen
2470 Majestic Pkwy, #120
Tucson, AZ 85705
Tel: 520-629-4333/801-792-4341
Fax: 520-629-4334

16. Based on the Commission's Form 499 records, True has a registered agent in the District of Columbia for service of process, but the other Defendant entities do not. True's agent is identified as:

Eva Armijo
True LD, LLC
2470 W Majestic Parkway Ste 120
Tucson, AZ 85705
Tel: 520-629-4333
Fax: 520-629-8355

III. STATEMENT OF FACTS

A. Regulatory Background

17. Section 276 of the Act requires the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). Included among the calls subject to the mandate of Section 276 are certain categories of coinless payphone calls, known as dial-around calls.⁵ Dial-around calls, which include access code calls and subscriber toll-free calls, are subject to compensation whether they are intrastate or interstate in nature. *Compensation Rate Order* at 15638-39 ¶ 3.

18. In 1996, the Commission adopted rules to implement the requirements of Section 276.⁶ With respect to dial-around calls, the FCC concluded that, because PSPs could not otherwise obtain fair compensation for such calls, the switch-based carriers to which dial-around calls are

⁵ See *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, Report and Order, 19 FCC Rcd 15636, 15638 ¶ 3 & n.9 (2004) ("Compensation Rate Order").

⁶ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd 21233 (1996).

routed must (in the absence of individual agreements) pay the PSP compensation for each completed call at a prescribed “default” rate per call. *Compensation Rate Order* at 15638-39 ¶ 3.

19. Under the current rule, dial-around compensation liability is imposed on the “Competing Carrier.” 47 C.F.R. §§ 64.1300(b), 64.1310(a). A Completing Carrier is defined as a “long distance carrier or switch-based reseller [(“SBR”)] that completes a coinless access code or toll-free payphone call” *Id.* § 64.1300(a). In the context of prepaid calling card calls, the Completing Carrier is the switch-based carrier who operates the switch to which a prepaid card call initially is routed and from which the call is switched toward its ultimate destination. *See Radiant*, 23 FCC Rcd at 8968-70 ¶¶ 21-23. In other words, once the call leaves the Completing Carrier’s facilities, each carrier in the chain looks for payment from the carrier from whom it receives the call.

20. Completing Carriers are required to “pay compensation to payphone service providers on a quarterly basis for each completed payphone call” 47 C.F.R. § 64.1310(a)(2). In order to ensure compliance with their payment obligations, the Commission requires each Completing Carrier to “establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion.” *Id.* § 64.1310(a)(1).

21. Completing Carriers are also required to provide to each PSP, with each quarterly compensation payment, a sworn statement by the carrier’s chief financial officer (“CFO”) certifying that the payment amount is accurate and is based on 100% of all completed calls originating from the PSP’s payphones and to submit a quarterly report (“Completing Carrier Report”) to PSPs that, among other things, identifies by dialed number and originating ANI all of the completed calls originating from the PSP’s payphones. *Id.* § 64.1310(a)(4).

22. The Commission has adopted additional rules to ensure the accuracy of compensation payments and to prevent the reemergence of past abuses by SBRs.⁷ Among other measures, Section 64.1320(a) of the Commission's rules requires that:

[E]ach Completing Carrier must undergo an audit of its section 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

47 C.F.R. § 64.1320(a). The auditor must verify the Completing Carrier's compliance with specific criteria. *Id.* § 64.1320(c). Each Completing Carrier must then file with the Commission a System Audit Report from the auditor regarding the carrier's compliance, and must provide the audit report to each PSP from whose payphones the Completing Carrier completes calls. *Id.* § 64.1320(b). Initial System Audit Reports were required to be filed on July 1, 2004, with annual updates on the anniversary date thereafter. *Id.* § 64.1320(b), (f).

23. In adopting the audit requirement, the Commission said that "[t]hese requirements will provide PSPs with further certainty that call completion data is accurate and further visibility into the basis for compensation." *Tollgate Order* at 19998 ¶ 44. The Commission added that

[t]o the extent that the SBR payments are late or incomplete, the Commission may impose forfeitures or even revoke section 214 authorization, if we find that SBRs have been lax in fulfilling their obligations. . . . [L]ate payment or non-payment to PSPs could result in substantial forfeitures: up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation. In egregious cases, we may issue an Order to Show Cause why we should not revoke a SBR's section 214 authority, and possibly bar the company's principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission.

Id.

⁷ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975, 19991 ¶ 34 (2003) ("*Tollgate Order*").

24. The Commission's rules also define as an "Intermediate Carrier" any facilities-based long distance carrier in the call path prior to the Completing Carrier. 47 C.F.R. § 64.1310(b). Intermediate Carriers are required to provide to each PSP a quarterly report ("Intermediate Carrier Report") that identifies all of the payphone calls originating from the PSP's ANIs and routed by the Intermediate Carrier to another carrier. *Id.* § 64.1310(c). The Intermediate Carrier Report must identify the name and address of each facilities-based long distance carrier to whom calls were routed and must list, by dialed number and originating ANI, the calls sent to each such carrier. *Id.* The Commission adopted this requirement to "improve the 'audit trail' for the PSPs by providing a means to verify the accuracy of call tracking reports from carriers in the call path." *Tollgate Order* at 30003 ¶ 52. The Commission said that

these new requirements will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers is out of proportion to the data provided by the final SBR in the call path.

Id.

25. In *Radiant*, the Commission provided further clarification on a number of aspects of the compensation rules. First, the FCC held that APCC Services has standing to bring complaints before the FCC on behalf of the PSPs it represents. *Radiant*, 23 FCC Rcd at 8967 ¶ 15.

26. Second, the FCC held that, under the FCC's rules, the "Completing Carrier" liable for payment of dial-around compensation in the prepaid calling card context is the facilities-based carrier or switch-based reseller that "operates a platform on which calling card calls initially terminate and from which the calls are sent to their destinations for completion." *Id.* at 8970 ¶ 23. In so holding, the Commission specifically rejected the competing view that the terminating interexchange carrier (i.e. the carrier that hands the call to the terminating LEC) is the Completing Carrier. *Id.* at 8970 ¶ 24. The Commission said that "completing a call as used

in the *Tollgate Order* means processing it at a platform and routing it towards its final destination, not simply being the last switch in the call chain.” *Id.*

27. Third, the FCC held that a Completing Carrier cannot rely on its unaudited call completion records to establish the number of completed calls for which it is liable. Rather, the number of calls the Completing Carrier received from the Intermediate Carrier is a highly relevant factor in determining the Completing Carrier’s liabilities. *Id.* at 8971-72 ¶¶ 28-31. Fourth, the Commission reiterated that unpaid dial-around compensation accrues interest at the rate of 11.25% per year. *Id.* at 8974 ¶ 34; *see also NetworkIP, LLC v. FCC*, No. 06-1364, 2008 U.S. App. LEXIS 23264, at *35 (D.C. Cir. Nov. 7, 2008) (upholding the application of the 11.25% interest rate in a formal complaint proceeding seeking recovery of unpaid dial-around compensation).

B. Defendant’s Failure to Pay the Compensation Due for the Intermediate Carrier Reported Calls

28. Six Intermediate Carriers—Global Crossing, Qwest Communications Corporation (“Qwest”), Mercury Telecom, Inc. (“Mercury”), LataOne LLC (“LataOne”), Net Tel, LLC (“Net Tel”), and Savon Telecom, LLC (“Savon”)—have identified either West Star, True, and/or Global as a facilities-based carrier that received dial-around calls originating from Represented PSPs’ payphones during the Complaint Period.⁸

29. The data from the Intermediate Carrier Reports identifying West Star, True, and Global as receiving calls appears in separate folders for each Intermediate Carrier in the CD attached

⁸ See Exhibit 3 (Jaeger Decl.) at 3-4 ¶ 9. It is possible that these or other Intermediate Carriers have sent additional calls to Defendant from the Represented PSPs’ payphones but have not reported those calls to APCC Services. To the extent that Defendant has received calls, from Intermediate Carriers or otherwise, other than those reported by the Intermediate Carriers listed in this complaint, this complaint seeks recovery of all unpaid dial-around compensation owed by Defendant for such calls.

hereto as Exhibit 6 (Intermediate Carrier Report Data).⁹ See Exhibit 3 (Jaeger Decl.) at 3 ¶ 13. The number of calls each Intermediate Carrier reported sending to West Star True, and Global, respectively, in each quarter of the Complaint Period is summarized in Exhibit 15 (Damages Calculation). See Exhibit 3 (Jaeger Decl.) at 4 ¶ 14.

30. For each quarter of the Complaint Period through 2007, APCC Services sent Defendant a CD that contained (1) a letter and accompanying memoranda requesting payment as of the payment date for that quarter, and (2) a text file identifying the Represented PSPs for that quarter and their ANIs. See *id.* ¶ 16.

31. Beginning January 2008, instead of sending a CD to Defendant, APCC Services provided the PSP quarterly list of ANIs and accompanying information by email to each Defendant entity. APCC Services also made the files available for downloading from APCC Services' carrier website, located at <http://carriers.apccsideas.com>. *Id.*

32. Dial-around compensation for calls completed in a given quarter is due on the first day of the second quarter following the quarter in which the calls were made.¹⁰ Thus, for example, dial-around compensation was due on January 1, 2005, for 3Q2004.

⁹ APCC Services has excerpted the data for West Star, True, and Global from the Intermediate Carrier Reports it received from each of the Intermediate Carriers. In their original format, the Intermediate Carrier Reports included data regarding all the carriers to which the Intermediate Carrier sent calls. The data was extracted from APCC Services' database of Intermediate Carrier data on the basis of the identification numbers for West Star, True, and Global as reported by the respective Intermediate Carriers. See Exhibit 3 (Jaeger Decl.) at 3 ¶ 13. APCC Services has in its possession the full Intermediate Carrier Report for each quarter of the Complaint Period as received from each of the Intermediate Carriers and will provide them to Commission staff upon request, pursuant to any appropriate confidentiality procedures that may be necessary to protect the proprietary information of the carriers identified in those reports.

¹⁰ See *APCC Services, Inc. et al. v. TS Interactive, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 10456 (EB 2004); *APCC Services, Inc. et al. v. WorldCom*, 35 F. Supp. 2d 1, 9 (D.D.C. 2001).

33. Defendant made no compensation payment to APCC Services for any quarter of the Complaint Period. *See Exhibit 3* (Jaeger Decl.) at 4 ¶ 17.¹¹

34. Defendant also failed to file a Completing Carrier Report for any quarter of the Complaint Period. *Id.* ¶ 18.

35. Defendant did not file any Intermediate Carrier reports indicating that any of the calls that Intermediate Carriers reported sending to Defendant were sent on by Defendant to other carriers; thus the calls were presumptively completed by Defendant. *Id.* ¶ 15.

36. Defendant has not entered into an alternative compensation arrangement with APCC Services or any of the Represented PSPs. *Id.* at 4-5 ¶ 21.

37. For each quarter of the Complaint Period, after Defendant either failed to make any payment or made an incomplete payment, APCC Services sent a demand letter and an accompanying invoice to Defendant. *Id.* at 5 ¶ 22. The invoices identified the Intermediate Carriers reporting calls sent to Defendant and the number of calls sent by each Intermediate Carrier. *Id.* In the demand letter, APCC Services demanded payment for all calls reported as routed to Defendant. *Id.* A sample demand letter and invoice are attached hereto as Exhibit 7.

38. APCC Services has on several occasions contacted Defendant to discuss payment of unpaid compensation owed for the Intermediate Carrier Reported Calls. *See Exhibit 3* (Jaeger Decl.) at 5 ¶ 24.

C. Defendant's Other Violations of the Payphone Compensation Rules

39. Defendant failed to provide a CFO certification for any quarter during the Complaint Period. *Id.* at 4 ¶ 18.

40. As far as APCC Services is aware, Defendant did not have a call-tracking system in place at any time during the Complaint Period. *Id.* ¶ 19.

¹¹ APCC Services reserves the right to supplement the record in the event that Defendant continues to fail to pay the compensation due in subsequent quarters.

41. Defendant never conducted a call tracking system audit and never filed a system audit report with the Commission. *Id.* ¶ 20.

D. APCC Services' Informal Complaints and Defendant's Responses

42. On June 26, 2006, APCC Services filed the 2006 Informal Complaint, naming West Star as the defendant. *See Exhibit 2* (Informal Complaints). The 2006 Informal Complaint sought recovery of the unpaid dial-around compensation owed by Defendant for 3Q2004 through 4Q2005. *Id.*

43. After West Star had failed to respond to the informal complaint for more than 19 months after it was filed, the Commission issued a notice of apparent liability for forfeiture against West Star, charging West Star with failure to respond to APCC Services' informal complaint and five other informal complaints filed by other PSPs or their representatives seeking unpaid compensation. *See West Star Telecommunications, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 2008-3209-0001, 23 FCC Rcd 2707 (rel. Feb. 19, 2008) ("West Star NAL").

44. Subsequently, the Commission issued a notice of apparent liability for forfeiture against Global, charging Global with failure to respond to compensation-related informal complaints filed by complainants other than APCC Services. *Global Access, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 2008-3209-0006, DA 08-1366 (rel. June 10, 2008) ("*Global Access NAL*").

45. On June 30, 2008, after determining that both Global and True were "alter egos" of West Star (see Section III.F. below), APCC Services filed the 2008 Informal Complaint, naming Global and True, as well as West Star, as defendants. The 2008 Informal Complaint sought recovery of the unpaid dial-around compensation owed by Defendant for 1Q2006 through 4Q2007.

46. On August 13, 2008, True filed an abbreviated, slightly more than one-page response to the 2008 Informal Complaint (“True 2008 Complaint Response”). A copy of True’s 2008 Response is attached hereto as Exhibit 8.

47. In the True 2008 Complaint Response, True identified itself as an Arizona limited liability company in good standing with the Arizona Corporation Commission, but provided no other description of itself or the services it provides. See Exhibit 8 (True 2008 Complaint Response) at 1. While incorrectly claiming that APCC Services’ allegations of liability were unsupported, True did not deny the complaint’s central factual allegations that True LD received dial-around calls from the Intermediate Carriers identified in the Complaint, that True did not report sending the calls to another facilities-based carrier, and that True is therefore the Completing Carrier liable for compensating the Represented PSPs. *Id.*

48. Instead, apparently misconstruing the complaint as alleging contractual claims, True stated it was “unaware of any contractual obligations with the underlying carriers listed in the invoice.” *Id.* True also stated that the “other Defendants” – West Star and Global – might be liable, without acknowledging that those companies were closely related to – and in fact, alter egos of – True. *Id.* at 2. See also Section III.F. below.

49. On August 27, 2008, APCC Services filed a reply to True’s response, stating that True had been utterly unresponsive to the 2008 Informal Complaint. See Exhibit 9 (APCC Services 2008 Complaint Reply).

50. As for West Star and Global, on August 13, 2008, the day before responses were due, they requested an extension of time to respond to the 2008 Informal Complaint. The Bureau granted a 30-day extension, and also encouraged West Star and Global to submit responses, long overdue, to the numerous other pending informal complaints and NALs within the same time

frame. See Exhibit 10 (West Star/Global Request for Extension and Subsequent Correspondence).

51. In fact, West Star did not file a response to either the 2006 Informal Complaint or the 2008 Informal Complaint until January 9, 2009, more than two-and-a-half years after the 2006 Informal Complaint was filed and almost four months after the expiration of the extension of time granted by the Bureau for a response to the 2008 Informal Complaint. Copies of the responses are attached hereto as Exhibits 11 and 12.

52. In its response to the 2006 Complaint (“West Star 2006 Complaint Response”), West Star provided no description of itself or the services it provided. West Star claimed that it ceased operations in October 2006 and therefore “believed it did not need to respond to the informal complaint.” Exhibit 11 (West Star 2006 Complaint Response) at 1. West Star’s Form 499-A records at the Commission, however, do not reflect that West Star has notified the Commission that it has ceased operations.

53. In the West Star 2006 Complaint Response, West Star did not deny that it received CDs from APCC Services identifying the Represented ANIs, but claimed that it never received any “documentation that supports APCC’s allegations of compensation owed by West Star.” *Id.* Without explanation, West Star denied that it was the Completing Carrier for the calls at issue. *Id.* Finally, West Star stated that it “no longer has any ability to pay” compensation. *Id.*

54. In their joint response to the 2008 Informal Complaint (“West Star/Global 2008 Complaint Response”), West Star and Global repeated the same arguments made in the West Star 2006 Complaint Response, adding the claim that Global “ceased operations in March 2007” and therefore also no longer had “any ability to pay.” Exhibit 12 (West Star/Global 2008 Complaint Response) at 1.

55. On January 16, 2009, APCC Services sent a certified letter (the “Notice Letter”) to Defendant, which notified Defendant that APCC Services was contemplating the filing of a formal complaint, and extended a final opportunity to settle in accordance with 47 C.F.R. § 1.721(a)(8). A copy of the Notice Letter is attached hereto as Exhibit 13.

56. On January 26, 2009, True responded to the Notice Letter (the “True Response to Notice Letter”), essentially repeating the same arguments made in the True 2008 Complaint Response. A copy of the True Response to Notice Letter is attached hereto as Exhibit 14.

E. Damages

57. As reflected in the calculation attached hereto as Exhibit 15 (“Damages Calculation”), Intermediate Carrier Reports show that during the Complaint Period Defendant received at least 1,428,176 calls that originated at Represented PSPs’ payphones. *See* Exhibit 15 (Damages Calculation); Exhibit 3 (Jaeger Decl.) at 4 ¶ 14; Exhibit 6 (Intermediate Carrier Report Data).

58. As reflected in the Damages Calculation, Defendant paid no compensation for any of the calls. *See* Exhibit 15 (Damages Calculation).

59. As discussed more fully below, given Defendant’s failure to provide any reliable data and unless and until acceptable evidence is produced that can serve as a data point for a *Radiant*-type analysis, Defendant must pay APCC Services for all the calls sent to it by Intermediate Carriers.

60. The compensation owed for these calls, at the applicable FCC-prescribed per-call rate (\$.494) is \$705,518.94. *See* Exhibit 15 (Damages Calculation).

61. The interest owed on that amount, at the Commission-prescribed 11.25% rate, through January 31, 2009, equals \$208,931.88. *Id.*

F. Defendant Entities Are Commonly Operated and Controlled

62. True, West Star, and Global are operated as a common enterprise. The same person, Jeffrey Larsen, is (1) a managing member¹² of True LD, (2) the only member and only manager of West Star,¹³ and (3) managing member¹⁴ of Global Access. True has used many of the same 800 access numbers as West Star and Global Access.¹⁵

63. The three companies have been operated as “alter egos” of one another and/or of Larsen himself.¹⁶ All three companies have shared the same business address, 2470 Majestic Pkwy,

¹² According to Arizona Corporation Commission records, Larsen has been a managing member of True since True was incorporated on June 3, 2004. See Exhibit 16 (document on file with the Arizona Corporation Commission). The records also indicate that John Vogel became an additional managing member on September 8, 2005. A “member” of a Limited Liability Company such as True is an owner of the company. A “manager” of a Limited Liability Company is equivalent to a corporate officer such as a CEO, and/or a director. See also True LD’s Form 499-A information, attached hereto as Exhibit 17 (identifying Larsen as True’s “Chairman or other senior officer” and Vogel as True’s “Chief Executive Officer”).

¹³ See *Thermo Credit, LLC v. West Star Telecommunications, LLC et al.*, Case No. 2:07-cv-05299-ILRL-ALC (E.D. La., filed Aug. 31, 2007) Complaint at 2, ¶ II(B), attached hereto as Exhibit 18 (“*Thermo Credit* Complaint”). The complaint alleges that “Jeffrey Larsen was and remains the sole member of West Star Telecommunications, L.L.C. and the sole manager of said limited liability company.” *Id.* In its answer, West Star admits the allegation. See Exhibit 19 (*Thermo Credit* Answer) at 1, ¶ I. See also Exhibit 10 (West Star/Global Extension Request and Subsequent Correspondence”), in which Larsen identifies himself as “manager” of both West Star and Global Access; West Star’s Form 499-A information, <<http://fjallfoss.fcc.gov/cgb/form499/499detail.cfm?FilerNum=825032>> (February 5, 2009), attached hereto as Exhibit 20.

¹⁴ See Exhibit 10 (West Star/Global Extension Request and Subsequent Correspondence) at ___ (identifying Larsen as “manager” of Global). See also Exhibit 21 (*True LD, LLC v. Southwest Communications, Inc.*, No. 05-1159-CV-W-FJG, Order (W.D. Mo., Nov. 28, 2005)) (“*Southwest Order*”), discussed in the footnote immediately following.

¹⁵ According to the Intermediate Carrier Reports, West Star, True, and Global have shared numerous toll-free numbers. Exhibit 3 (Jaeger Decl.) at 5-6 ¶ 26. For example, the Intermediate Carrier Reports reflect that the toll-free number for which the most calls were sent to West Star in 3Q2006 (877-487-9458, 36,793 calls) is the same toll-free number for which the most calls were sent to Global in 1Q2007 (877-487-9458, 30,495 calls). *Id.* Similarly, the toll-free number for which the second-highest number of calls were sent to West Star in 3Q2006 (800-765-4498, 19,089 calls) is the same toll-free number for which the most calls were sent to True in 1Q2007 (800-765-4498, 27,814 calls).

¹⁶ In a court case involving True in November 2005, the U.S. District Court for the Western District of Missouri gave credence to the opposing party’s claim that True is the “alter-ego” of

#120, Tucson, AZ 85705.¹⁷ True shares a web site¹⁸ and previously shared another business address in Sandy, Utah, with Global Access. See Exhibit 21 (Southwest Order). True LD also routinely made payments on contracts entered into by Global Access. See Exhibit 23 (Records Received from Southwest Communications, Inc.).

IV. DEFENDANT'S VIOLATIONS

A. Count One: Defendant's Failure to Pay the Compensation Owed Violates Section 201(b) of the Act

64. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-63 of this complaint.

65. Defendant's failure to pay dial-around compensation billed by and owed to APCC Services on behalf of the Represented PSPs for the Complaint Period violates Sections 64.1300 and 64.1310 of the Commission's rules, 47 C.F.R. §§ 64.1300, 64.1310, and is an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

B. Count Two: Defendant's Failure to Pay the Compensation Owed Violates Section 276(b) of the Act

66. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-65 of this complaint.

(Footnote continued)

Global Access based on the allegations that Global Access and True "are both Utah LLC's with the same managing member, registered agent and organizer, they both operate out of the same business address in Sandy, Utah," and other factors. See Exhibit 21 (Southwest Communications Order). See also Exhibit 18 (Thermo Credit Complaint) at 5-6 ¶ XVII, (alleging on information and belief that Thermo Credit commingled and/or converted West Star funds to his own use and benefit). Larsen also agreed to be personally responsible to make payments to settle West Star's unpaid debts to Thermo Credit, LLC. See Exhibit 22 (Thermo Credit Consent Judgment).

¹⁷ West Star's Form 499 records identify it as a "toll reseller" and provide the following address: 6905 South 1300 East #242, Midvale, UT 84047. See Exhibit 20 (West Star Form 499-A information). The information, however, was last updated on April 3, 2006. A letter sent to West Star at that address in January 2009 was returned as undeliverable.

¹⁸ Entering the web address <globalaccessld.com> leads one to the True LD website, which can also be reached via <trueld.com>.

67. Defendant's failure to pay dial-around compensation billed by and owed to APCC Services on behalf of the Represented PSPs for the Complaint Period violates Sections 64.1300 and 64.1310 of the Commission's rules, 47 C.F.R. §§ 64.1300, 64.1310, and therefore violates Section 276(b) of the Act, 47 U.S.C. § 276(b).

C. Count Three: Defendant's Failure to Track and Report Completed Calls Violates Section 201(b) of the Act

68. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-67 of this complaint.

69. Defendant's failure to track dial-around calls completed from APCC Services' customers' payphones and report those calls to APCC Services violates Section 64.1310 of the Commission's Rules, 47 C.F.R. § 64.1310, and is an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

D. Count Four: Defendant's Failure to Track and Report Completed Calls Violates Section 276(b) of the Act

70. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-69 of this complaint.

71. Defendant's failure to track dial-around calls completed from APCC Services' customers' payphones and report those calls to APCC Services violates Section 64.1310 of the Commission's Rules, 47 C.F.R. § 64.1310, and therefore violates Section 276(b) of the Act, 47 U.S.C. § 276(b).

E. Count Five: Defendant's Failure to Obtain a Tracking System Audit and File an Audit Report Violates Section 201(b) of the Act

72. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-71 of this complaint.

73. Defendant's failure to obtain an audit of its call tracking system and file a System Audit Report violates Section 64.1320 of the Commission's rules, 47 C.F.R. § 64.1320, and is an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

F. Count Six: Defendant's Failure to Obtain a Tracking System Audit and File an Audit Report Violates Section 276(b) of the Act

74. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-73 of this complaint.

75. Defendant's failure to obtain an audit of its call tracking system and file a System Audit Report violates Section 64.1320 of the Commission's rules, 47 C.F.R. § 64.1320, and therefore violates Section 276(b) of the Act, 47 U.S.C. § 276(b).

V. LEGAL ANALYSIS

A. Defendant's Failure to Pay Compensation Violates Section 201(b) and Section 276(b)

76. Under the Commission's rules effective as of July 1, 2004 (and thus in effect during the Complaint Period), Defendant is a Completing Carrier with respect to any dial-around calls that it completes. 47 C.F.R. § 64.1300(a). A Completing Carrier is the facilities-based carrier or switch-based reseller that "operates a platform on which calling card calls initially terminate and from which the calls are sent to their destinations for completion." *Radiant*, 23 FCC Rcd at 8970 ¶ 23. Defendant was identified by five Intermediate Carriers as the recipient of dial-around calls originating from the Represented PSPs' payphones.

77. Since Defendant did not itself file any Intermediate Carrier reports, it follows that Defendant did not route the dial-around calls to another carrier before they were delivered to a calling card platform. *Id.* at 8970 ¶ 26 ("although [Intelligent Switching and Software, LLC claims to be an Intermediate Carrier, it in fact filed no Intermediate Carrier reports]"). Therefore,

it follows that Defendant is a Completing Carrier, not an Intermediate Carrier, for the calls at issue. *Id.* (noting that the category of Intermediate Carriers is mutually exclusive with that of Completing Carriers).

78. As a Completing Carrier, Defendant is required to pay dial-around compensation for all dial-around calls that it completes. 47 C.F.R. § 1300(b). In the absence of an agreement to enter into an alternative compensation arrangement, Defendant is required to pay dial-around compensation at the rate set forth in Section 64.1300(c) of the Commission's rules, 47 C.F.R. § 64.1300(c). Defendant did not enter into any alternative compensation arrangement with the Represented PSPs. Accordingly, Defendant was obligated to pay dial-around compensation to the Represented PSPs during the Complaint Period in an amount equal to the number of calls completed by Defendant times the applicable default compensation rate.

79. For all quarters during the Complaint Period except 3Q2004, the default compensation rate is \$.494. *See* 47 C.F.R. § 64.1300(c) (2004-2008). For 3Q2004, the default compensation rate is \$.24. *See* 47 C.F.R. § 64.1300(c) (2003).

80. Defendant's failure to pay such dial-around compensation for any quarter of the Complaint Period constitutes a violation of Sections 64.1300 and 64.1310 of the Commission's rules, 47 C.F.R. §§ 64.1300, 64.1310. A violation of Commission's payphone compensation rules "constitutes . . . an unjust and unreasonable practice in violation of Section 201(b) of the Act [47 U.S.C. § 201(b)]."¹⁹ Defendant's failure to pay such dial-around compensation also

¹⁹ *Tollgate Order*, 18 FCC Rcd at 19990 ¶ 32; *Radiant*, 23 FCC Rcd at 8968 ¶ 18; *APCC Services, Inc. et al. v. Network IP, LLC et al.*, Order on Review, 21 FCC Rcd 10488, ¶¶ 10, 11-16 (2006) (holding in a dial-around compensation formal complaint proceeding that the "failure to pay dial-around compensation constitutes a violation of section 201(b) of the Act"), *aff'd in relevant part and remanded in part sub nom., NetworkIP, LLC v. FCC*, No. 06-1364, 2008 U.S. App. LEXIS 23264 (D.C. Cir. Nov. 7, 2008); *see also Metrophones Telecommunications, Inc. v. Global Crossing Telecommunications, Inc.*, 423 F.3d 1056, 1067-70 (9th Cir. 2005) (and Commission orders cited therein), *aff'd, Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 127 S. Ct. 1513 (2007).

violates Section 276(b), 47 U.S.C. § 276(b), which entitles PSPs to collect compensation and directs the FCC to adopt implementing rules.²⁰

B. Defendant's Failure to Track and Report Completed Calls Violates Section 201(b) and Section 276(b)

81. Defendant's failure to track and report completed calls for any quarter of the Complaint Period violates Section 64.1310 of Commission's rules. Section 64.1310(a)(1) of the Commission's rules requires all Completing Carriers such as Defendant to "establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion." 47 C.F.R. § 64.1310(a)(1). Section 64.1310(a)(3) of the Commission's rules requires all Completing Carriers to submit on a quarterly basis a certification, signed by the carrier's chief financial officer, that it has paid compensation "on 100% of all completed calls" *Id.* § 64.1310(a)(3). Section 64.1310(a)(4) of the Commission's rules requires all Completing Carriers to submit on a quarterly basis a Completing Carrier Report identifying, among other things, all of the completed calls that it carried. *Id.* § 64.1310(a)(4).

82. Defendant did not provide a chief financial officer certification or a Completing Carrier Report for any portion of the Complaint Period. In light of these failures, Defendant cannot be deemed to have established a meaningful call tracking system. Accordingly, Defendant is in violation of 47 C.F.R. § 64.1310(a)(1), (3), and (4). Such violation of the Commission's rules and orders constitutes an unjust and unreasonable practice under Section 201(b) of the Act. Defendant's failure to comply with the tracking and reporting rules also violates Section 276(b), which entitles PSPs to collect compensation and directs the FCC to adopt implementing rules.

²⁰ See *APCC Services, Inc. et al. v. Network IP, LLC et al.*, Memorandum Opinion and Order, 20 FCC Rcd 2073, ¶¶ 1,13, 26 (EB 2005).

C. Defendant's Failure to Submit a System Audit Report Violates Section 201(b) and Section 276(b)

83. Section 64.1320 of the Commission's rules requires that, unless they have entered into an alternative compensation arrangement, all Completing Carriers must file an accurate System Audit Report, 47 C.F.R. § 64.1320(a), and update that report on an annual basis, 47 C.F.R. § 64.1320(f). Defendant did not file an initial System Audit Report or any annual update and has not entered into an alternative compensation arrangement. Accordingly Defendant is in violation of 47 C.F.R. § 64.1320. Such violation of the Commission's rules and their adopting orders constitutes an unjust and unreasonable practice under Section 201(b) of the Act. Defendant's failure to comply with the reporting rules also violates Section 276(b), which entitles PSPs to collect compensation and directs the FCC to adopt implementing rules.

D. Based on the Available Data, Defendant Owes Damages in the Amount of At Least \$915,090.40

84. Pursuant to Section 1.722(a) of the Commission's Rules, APCC Services is entitled to collect damages on behalf of the Represented PSPs in an amount calculated as follows.

1. On the current record, the only data point for a damages determination is the number of Intermediate Carrier-reported calls

85. The Commission's call tracking, call reporting and audit requirements are critical to the Commission's payphone compensation regime's success because they help ensure that carriers' compensation payments are accurate and that PSPs receive reliable call data so that they can verify the accuracy of payments. Due to Defendant's total failure to comply with the Commission's call-tracking, reporting, and audit requirements during the Complaint Period, there is no evidence whatsoever upon which PSPs (or the Commission) can rely to determine the amount of compensation owed.²¹

²¹ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 19 FCC Rcd 21457, 21469 ¶ 19 (2004) ("Tollgate

86. In the absence of reliable call data from an accurate, audited call tracking system, the Commission must rely on other sources of information to determine damages. In *Radiant*, faced with a similar problem, the Commission used Intermediate Carrier-reported calls as one data point from which to construct an estimate of the compensation owed and the damages resulting from the defendants' failure to pay that amount. *Id.* at 8971-72 ¶¶ 28-30. The Commission used the Intermediate Carrier reports in conjunction with another data source, an estimate of completed calls that the *Radiant* defendants had made based on the number of calls with a duration of 30 seconds or longer. Finding that both of these "proxies" for completed calls had defects, but apparently finding some merit in each of them as well, the Commission essentially split the difference between the two. *See Id.* ¶ 30 (attributing as completed calls 100% of calls identified by the defendant as lasting 30 seconds or longer and 50% of calls identified by defendant as lasting less than 30 seconds).

87. The *Radiant* approach, however, is not feasible here based on the current record, because there is available as yet only one data point—the Intermediate Carrier-reported calls. While they do not differentiate between completed and uncompleted calls, Intermediate Carrier Reports are Commission-approved, reliable, neutral third-party data sources based on identifiable dial-around calls that were actually recorded as delivered from the Represented PSPs' payphones to Defendant's switch.

2. Switch data, if available, could serve as one of the data points for a *Radiant* analysis or a variation on a *Radiant* analysis

88. As stated above, in the absence of any call data whatsoever from Defendant, there is no evidence upon which PSPs (or the Commission) can rely to determine the amount of

(Footnote continued)

Reconsideration Order"); *see also Radiant*, 23 FCC Rcd at 8971 ¶ 30 ("Because the Defendants failed to comply with the Commission's call tracking rules, we cannot ascertain the exact number of calls for which [the primary defendant] is liable").

compensation owed other than the Intermediate Carrier Reports. *Tollgate Reconsideration Order*, 19 FCC Rcd at 21469 ¶ 19. Pursuant to 47 C.F.R. § 1.722(h)(2), however, APCC Services states that a more accurate estimate of completed calls may be possible depending on the quality of any unaudited data in Defendant's possession. While call completion data is not available to PSPs (*see Tollgate Order*, 18 FCC Rcd at 19983 ¶ 19). APCC Services believes that Defendant may possess information, albeit unaudited, concerning which of the calls that were delivered to Defendant were completed because Defendant's switch generates call detail records ("CDRs") for each call it carries. The Commission's rules require that such records be maintained for 27 months, 47 C.F.R. § 64.1310(g). Although a longer period has passed since the earlier quarters of the Complaint Period, Defendant has been on notice since early in the Complaint Period of APCC Services' position that Defendant has failed to compensate APCC Services on behalf of the Represented PSPs for calls made from the Represented PSPs' payphones. APCC Services also believes that, independent of Defendant's obligations under the Commission's payphone compensation rules, Defendant would retain such records for its own billing and internal accounting purposes.

89. If Defendant produces complete switch records concerning (i) the dial-around calls it received from Intermediate Carriers and (ii) which of the calls were completed, and provides the information necessary to evaluate the accuracy and reliability of such data, it may be possible to use such evidence as a second data point, in conjunction with Intermediate Carrier Reports, and using a method similar although not necessarily identical to the *Radiant* approach. A more "detailed outline of the methodology that would be used," 47 C.F.R. § 1.722(h)(2)(iv), to calculate damages cannot be provided without first analyzing and evaluating such data as Defendant may provide. However, the approach taken by the Commission in *Radiant* provides one example of a damages methodology.

90. Assuming the availability of Defendant's switch records, any use of such data must take account of the inherent difficulties in attempting to rely on data that is produced for the first time several years after the fact. The data may turn out to be wholly unreliable. Or it may prove difficult to assess with confidence the nature and value of what is made available. In any event, given that the data is wholly under Defendant's control, and that there are inherent incentives for Defendant to err on the side of "finding" fewer than 100% of the completed calls, any switch data that may be produced should be used only as one of a number of data points, and should be used only in conjunction with the Intermediate Carrier-reported data.

91. In a somewhat analogous situation, the Commission has recognized the need to counterbalance the inherent biases in a carrier's approach to estimating traffic volumes. In the *Prepaid Card Services Order*,²² the Commission addressed the problem of ensuring that prepaid card service providers gave accurate counts of intrastate and interstate/international minutes to other carriers for purposes of determining access charges. Recognizing that other carriers had little ability to verify the traffic data proffered by prepaid card service providers, the Commission concluded that, in light of the overall disparities between intrastate and interstate access charge levels, prepaid card service providers "would have the incentive and ability to avoid intrastate access charges" by underreporting intrastate minutes or by selectively choosing to rely on proxies rather than actual data depending on the economic consequences of the choice. *Id.* at 7301 ¶ 31.

92. Therefore, in selecting a default "PIU" factor that transport providers could use for access charge purposes in cases where the prepaid card service provider did not provide a PIU based on its own traffic, the Commission deliberately selected a number (50%) that it recognized was

²² *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rd 7290 (2006), *aff'd in part and rev'd in part on other grounds*, *Qwest Services Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

higher than a number that was supported by record evidence. *Id.* at 7303 ¶ 36. Notwithstanding that evidence, the Commission stated that “we believe a 50 percent default factor will provide the necessary incentive for carriers to comply with the PIU reporting requirements.” *Id.*

3. In the absence of call completion data, Defendant should be required to pay compensation for all calls identified in Intermediate Carrier reports

93. In the event that acceptable switch data is not made available, the Commission should base its calculation of unpaid compensation on the only legitimate data point that is currently available: the number of dial-around calls delivered to Defendant each quarter by Intermediate Carriers from the Represented PSPs’ payphones. Such an approach is justified because it is necessary in order to ensure that PSPs are “fairly compensated” (47 U.S.C. 276(b)(1)(A)) and provides the appropriate compliance incentives to carriers who otherwise have demonstrated that they have the ability and strong incentives not to comply.

94. Section 276 requires the Commission to “ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call. . . .” 47 U.S.C. § 276(b)(1)(A). If carriers know that they can ignore their payment obligation, wait to see if PSPs find them out, then see if PSPs have the money to sue and/or if the expense of suit makes it economical to pursue collection, and the carriers know that the worst that can happen to them is that they will end up paying, at worst, the same or less compensation than they would have if they had complied with the Commission’s rules by conducting an audit and complying with their payment obligations, at least some rational SBRs will choose not to pay.

95. The net of such a result is that PSPs will not be fully compensated for each and every completed call since some carriers would not be paying. In looking at the result in a single case, the Commission has to consider the effect of the results in that case on its overall mandate to ensure that PSPs are being fully compensated “for each and every completed call” on an overall

basis. The fact that there is a possibility that a carrier in a particular case who violated the rules by not complying with the requirement of a system audit in order to ensure that its call tracking is accurate may make some arguable over-payment is permissible if it is necessary to effectuate the total statutory scheme so long as the result in the case does not lead to an overall over-recovery by PSPs as a whole. Indeed the Commission, as discussed above, recognized that this possibility of such an over recovery does not mean the Commission should avoid all possibility of overpayment; to the contrary, even where there is an acknowledged possibility of overpayment, the Commission will act if it is necessary to effectuate the regulatory scheme. See *Prepaid Card Services Order*, 21 FCC Rcd at 7301-04 ¶¶ 31-37. The Commission cannot administer the dial around scheme so as to create a bias for under-recovery by PSPs as a whole. Rather, especially in light of Section 276's mandate, the Commission should be willing to accept some possible overrecovery in individual cases where it is unavoidably necessary in order to "provide the necessary incentive for carriers to comply." *Id.* at 7303 ¶ 36.

96. In sum, if the only available evidence is the Intermediate Carrier data—which the Commission has specifically found to be reliable—the Commission must base its damages assessment on that data. In the absence of any specific cognizable evidence as to the percentage of completed calls, the commission must require payment on all calls, or it risks PSPs being under-compensated in violation of the statutory mandate.

97. Once the number of completed calls is arrived at (whether by relying solely on the Intermediate Carrier reported-calls as a proxy for completed calls or by using the Intermediate Carrier report data in conjunction with data supplied by Defendant), the compensation due to APCC Services can be calculated as described in the previous section: by multiplying the number of completed calls by the applicable per-compensation rate (\$.494), and adding interest at the prescribed rate of 11.25%.

98. Assuming compensation is owed on all the calls reported as delivered to Defendant by Intermediate Carriers, APCC Services' damages, including interest through January 31, 2009, are \$914,441.93. See Exhibit 15 (Damages Calculations).

99. In addition to the relief described above, APCC Services seeks an order compelling Defendant to come into compliance with the requirements of 47 C.F.R. §§ 64.1310 and 64.1320.

E. Defendant Entities Are Jointly and Severally Liable

100. As the Commission and the courts have held, in carrying out its Communications Act responsibilities the Commission "is entitled to look through corporate entities and treat the separate entities as one for purposes of regulation."²³ In so doing, the Commission is not limited by "the strict standards of the common law alter ego doctrine."²⁴ Rather, the key consideration is whether "the statutory purpose could be easily frustrated through the use of separate corporate entities."²⁵ As the Commission explained in a order issued shortly after the MFJ rejecting challenges by the then-Regional Holding Companies that the Commission did not have jurisdiction over them since only their subsidiary operating companies were common carriers, "our statutory mandate [can] not be limited by the corporate structure that a company adopts to carry out its business purposes or by distinctions that are of no practical significance."²⁶

101. In the broadcast context, the Commission has provided specific guidance on how it will apply these principles to parties that are operated as a common enterprise. For example, for

²³ *General Tel. Co. v. United States*, 449 F.2d 846, 855 (5th Cir. 1971) ("*General*"); see also *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950).

²⁴ *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734 (D. C. Cir. 1974).

²⁵ *General* at 855.

²⁶ *Consolidated Application of American Telephone and Telegraph Company and Specified Bell System Companies, Memorandum Opinion and Order*, 98 F.C.C. 2d 141, ¶ 23 (1984); see also *Telenet Corporation, GTE, Proposed Merger Under Section 214 of Communications Act*, 70 F.C.C. 2d 2249, 2250 (1979) ("the corporate structure that a company tailors to carry out is business purposes is less important from a regulatory standpoint than the impact of corporate control").

purposes of attributing misconduct by a parent to its broadcast subsidiary, or vice versa, the Commission has stated:

As a general matter . . . if a close ongoing relationship between the parent and the subsidiary can be found, if the two have common principals, and if the common principals are actively involved in the day-to-day operations of the broadcast subsidiary, . . . [and] if the corporate parent is in any way involved in FCC-related misconduct, whether or not such misconduct involves the broadcast subsidiary, the bearing of that misconduct on the subsidiary's qualifications would be considered.²⁷

102. Similarly, in cases involving two related subsidiaries with shared principals, "FCC-related misconduct [by a related subsidiary] will be treated in the same fashion as that involving the parent-subsidiary relationship."²⁸ These same principles apply in non-broadcast authorization proceedings, where the Commission also has a duty to inquire into prior misconduct and to "assess its relevance . . . consistent with the principles set forth in the character policy statement."²⁹

103. In the instant proceeding, the available evidence shows that the Defendant entities have been operated as a common enterprise, and indeed, as alter egos of one another. Specifically, True LD, West Star, and Global Access share a common owner and officer, Jeffrey Larsen, who has been actively involved in the day-to-day operations of each carrier. The same person, Jeffrey Larsen, is (1) a managing member of True LD, (2) the only member and only manager of West Star, and (3) managing member of Global Access. *See* ¶ 62 above.

104. The three companies have been operated as "alter egos" of one another and/or of Larsen himself. All three companies have shared the same business address, 2470 Majestic Pkwy, #120,

²⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1218-19 ¶ 79 (1986).

²⁸ *Id.* at 1220 ¶ 82.

²⁹ *Lockheed Martin Corp., COMSAT Government Systems, LLC, and COMSAT Corporation*, Order on Reconsideration, 17 FCC Rcd 13160, 13167 ¶ 17 (2002) ("*Lockheed*") (citing *MCI Telecommunications Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 11077 (1999)).

Tucson, AZ 85705. True, West Star, and Global have shared many toll-free numbers, and True shares a web site and previously shared another business address in Sandy, Utah, with Global Access. True LD also routinely made payments on contracts entered into by Global Access. See ¶ 63 above.

105. Accordingly, the Commission must look past the corporate form and hold them jointly and severally liable for their non-payment of compensation owed to the Represented PSPs and their violations of the Commission's payphone compensation rules and the Act.

VI. PROPOSED FINDINGS OF FACT

106. APCC Services is the agent of, and is acting on the behalf of, the Represented PSPs.

107. True, West Star, and Global are operated as a common enterprise and as alter egos of one another.

108. Defendant is a common carrier.

109. Defendant is a switch-based carrier.

110. During the Complaint Period, Intermediate Carriers delivered to Defendant 1,428,176 dial-around calls that originated from Represented PSP payphones, as detailed in Exhibit 15.

111. The Intermediate Carrier Reports are complete and accurate with respect to the calls reported as sent to Defendant from the Represented PSPs' payphones.

112. Defendant did not pay any dial-around compensation for the dial-around calls that Defendant received from the Represented PSPs' payphones for any quarter during the Complaint Period.

113. Defendant did not file an Intermediate Carrier report for any quarter during the Complaint Period.

114.No other carrier is the Completing Carrier with respect to any of the calls sent to Defendant by the Intermediate Carriers.

115.APCC Services has repeatedly attempted to collect the compensation owed to the Represented PSPs by Defendant.

116.Defendant failed to implement the call tracking system required by 47 C.F.R. § 64.1310(a)(1).

117.Defendant failed to submit the chief financial officer certification required by 47 C.F.R. § 64.1310(a)(3) for any quarter during the Complaint Period.

118.Defendant failed to submit the Completing Carrier Report required by 47 C.F.R. § 64.1310(a)(4) for any quarter during the Complaint Period.

119.Defendant failed to file the Payphone System Audit Report required by 47 C.F.R. § 64.1320.

120.Defendant has not entered into an alternative compensation arrangement with APCC Services.

VII. PROPOSED CONCLUSIONS OF LAW

121. True, West Star, and Global Access have been operated as a common enterprise and as alter egos of one another. Therefore, they must be held jointly and severally liable for their violations of the Commission's payphone compensation rules and of the Act.

122.Defendant is a Completing Carrier under the meaning of 47 C.F.R. § 64.1310(a) with respect to the calls it received from the Represented PSPs' payphones.

123.Under 47 C.F.R. §§ 64.1300 and 64.1310, the *Tollgate Order*, and the *Tollgate Reconsideration*, Defendant is obligated to pay dial-around compensation to the Represented PSPs for the dial-around calls it received from the Represented PSPs' payphones.

124. Defendant's failure to pay dial-around compensation in violation of Commission rules and orders is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

125. Defendant's failure to pay dial-around compensation is a violation of 47 U.S.C. § 276.

126. In light of Defendant's failure to (a) file a System Audit Report and (b) provide any data demonstrating that some of the calls reported as delivered to Defendant were not completed, all calls delivered to Defendant by Intermediate Carriers as reflected in Intermediate Carrier Reports are deemed completed, and thus compensable, calls.

127. Interest on unpaid dial-around compensation accrues at the rate of 11.25% per year.

128. APCC Services is entitled to damages in the amount of \$914,411.93, including interest through January 31, 2009.

129. Interest shall continue to accrue at 11.25% per year until payment is made.

130. Defendant's failure to comply with the call tracking and reporting requirements of 47 C.F.R. § 64.1310(a) in violation of Commission rules and orders is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

131. Defendant's failure to comply with the call tracking and reporting requirements of 47 C.F.R. § 64.1310(a) is a violation of 47 U.S.C. § 276.

132. Defendant's failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a) is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

133. Defendant's failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a) is a violation of 47 U.S.C. § 276.

VIII. APCC SERVICES' EFFORT TO SETTLE WITH DEFENDANT

134. Complainant hereby certifies that (1) on January 16, 2009, Complainant sent a certified letter (the "Notice Letter") to Defendant, which notified Defendant that Complainant was

contemplating the filing of a formal complaint, outlined the allegations that formed the basis of this Complaint, and extended a final opportunity to settle in accordance with 47 C.F.R. § 1.721(a)(8); (2) such letter invited a response within a reasonable time, and (3) Complainant has, in good faith discussed or attempted to discuss, the possibility of settlement with each Defendant prior to the filing of this Complaint. A copy of the Notice Letter is attached hereto as Exhibit 13.

135. On January 26, 2009, True responded to the Notice Letter (the “True Letter”), essentially repeating the same arguments made in the True 2008 Complaint Response. A copy of the True Letter is attached hereto as Exhibit 14. West Star and Global did not respond to the Notice Letter.

136. Other steps taken by APCC Services to resolve the dispute prior to the filing of the formal complaint include APCC Services’ previous attempts to collect the unpaid amounts owed by Defendant and to contact Defendant to discuss the matters at issue, as described above.

IX. INFORMATION DESIGNATION

A. Persons Believed to Have First-Hand Knowledge of the Facts Alleged

137. Pursuant to 47 C.F.R. §§ 1.721(a)(10)(i) and (iii), APCC Services states that the following individuals have, or, in the case of individuals in the employ of Defendant, are believed to have, first-hand knowledge of the facts alleged in this complaint. The criteria used to identify the persons below is as follows: the persons identified below as associated with APCC Services are the individuals who worked on and had first-hand knowledge of APCC Services’ efforts to bill and collect dial-around compensation from Defendant; the individuals identified below as associated with Defendant are Defendant’s known principals; and the individuals

identified below as associated with third parties are APCC Services' designated point of contact with respect to the matters at issue in this complaint.

138. Ruth Jaeger, President, APCC Services, 625 Slaters Lane, Suite 104, Alexandria, VA 22314, (tel.) 703-739-1322, (fax) 703-739-1324, has first-hand knowledge of (i) the relationships between PSPs, carriers, and the various clearinghouses involved in the payphone compensation process; (ii) APCC Services' dial-around collection process; (iii) APCC Services' efforts to collection dial-around collection from Defendant.

139. John Ellis, Service Delivery Director, MicroPact Engineering, Inc., 600 Herndon Parkway, Suite 100, Herndon, VA 20170, (tel.) 703-709-6110, (fax) 703-709-6118, as APCC Services' outside data processor, has first-hand knowledge of the data-processing steps involved in invoicing, collecting, and distributing dial-around compensation, including (i) analysis of data from Intermediate Carrier Reports and Completed Carrier Reports and (ii) reconciliation of carrier payment data with data from those reports.

140. Jeff Larsen, Managing Member, True, West Star, and Global, 2470 Majestic Pkwy, #120, Tucson, AZ 85705, (tel.) 520-629-4333, (fax) 520-629-4334, is believed to have first-hand knowledge of (i) Defendant's network and traffic; (ii) Defendant's dial-around compensation payments; (iii) Defendant's failure to pay dial-around compensation to the Represented PSPs; and (iv) APCC Services' efforts to collect such unpaid compensation.

141. John Vogel, Managing Member, True and Global, 2470 Majestic Pkwy, #120, Tucson, AZ 85705, (tel.) 520-629-4333, (fax) 520-629-4334. Mr. Vogel is believed to have first-hand knowledge of (i) Defendant's network and traffic; (ii) Defendant's dial-around compensation payments; (iii) Defendant's failure to pay dial-around compensation to the Represented PSPs; and (iv) APCC Services' efforts to collect such unpaid compensation.

142. Eva Armijo, True and Global, 2470 Majestic Pkwy, #120, Tucson, AZ 85705, (tel.) 520-629-4333, (fax) 520-629-8355. Ms Armijo is believed to have first-hand knowledge of (i) Defendant's network and traffic; (ii) Defendant's dial-around compensation payments; (iii) Defendant's failure to pay dial-around compensation to the Represented PSPs; and (iv) APCC Services' efforts to collect such unpaid compensation.

143. APCC Services reserves the right to add additional persons to this information designation if the Defendant's information designations and responses to discovery reveal additional persons with knowledge of the facts in this proceeding.

B. Relevant Documents, Data Compilations and Other Tangible Things

144. Pursuant to 47 C.F.R. §§ 1.721(a)(10)(ii) and (iii), APCC Services states that the following documents and other material in its possession are relevant to the facts alleged in this complaint. APCC Services identified the following documents as relevant by reviewing (i) its correspondence with Defendant concerning the matters alleged in this complaint; (ii) the Intermediate Carrier Reports it received that identified Defendant as a recipient of calls; and (iii) APCC Services' internal files. The individuals who conducted the information search are Ruth Jaeger of APCC Services and Robert Aldrich of Dickstein Shapiro LLP.

| Document No. | Document Description | Author | Recipient | Location | Relevance |
|--------------|---|---------------|-----------|----------------------------|--|
| 1 | APCC Services Compensation Agency Agreements executed by Represented PSPs | APCC Services | N/A | APCC Services headquarters | Demonstrates APCC Services is authorized agent of Represented PSPs |

| Document No | Document Description | Author | Recipient | Location | Relevance |
|-------------|--|----------------------------|----------------------------|----------------------------|--|
| 2 | PSP Powers of Attorney authorizing APCC Services to act on behalf of Represented PSPs | APCC Services | N/A | APCC Services headquarters | Demonstrates APCC Services is authorized agent of Represented PSPs |
| 3 | Intermediate Carrier Reports identifying Defendant as a carrier to whom dial-around calls were routed from the Represented PSPs' payphones | | APCC Services | APCC Services headquarters | Demonstrates the number of calls sent to Defendant by Intermediate Carriers |
| 4 | Copies and transmission logs of ANI list submissions, demand letters and invoices from APCC Services to Defendant | APCC Services | Defendant | APCC Services headquarters | Demonstrates APCC Services' efforts to collect from Defendant |
| 5 | APCC Services' payment records | APCC Services | N/A | APCC Services headquarters | Demonstrates that Defendant has paid no compensation for any quarter during the Complaint Period |
| 6 | E-mail exchange dated 6/13/07 | Ruth Jaeger Jeff Larsen | Jeff Larsen Ruth Jaeger | APCC Services headquarters | Relates to Complainant's efforts to obtain payment |
| 7 | Letter dated May 12, 2008 | Eva Armija | Ruth Jaeger | APCC Services headquarters | Relates to Complainant's efforts to obtain payment |

| Document No. | Document Description | Author | Recipient | Location | Relevance |
|--------------|--|---------------------------|---------------------------|----------------------------|--|
| 8 | E-mail exchange dated May 13, 2008, through May 28, 2008 | Eva Armija Ruth Jaeger | Ruth Jaeger Eva Armija | APCC Services headquarters | Relates to Complainant's efforts to obtain payment, Defendant's responsibility for compensation payments |
| 9 | Letter dated June 19, 2008 | Lisa C. Thompson | Ruth Jaeger | APCC Services headquarters | Relates to Complainant's efforts to obtain payment |

X. SEPARATE ACTIONS

145. Pursuant to 47 C.F.R. § 1.721(a)(9), APCC Services hereby states (i) that there are no actions related to this complaint pending before the Commission, any other governmental agency, or any court; and (ii) that the relief requested herein is not before the Commission in a notice and comment rulemaking.

XI. FORMAL COMPLAINT INTAKE FORM

146. In accordance with Section 1.721(a)(12) of the Commission's rules, 47 C.F.R. § 1.721(a)(12), a completed Formal Complaint Intake Form is attached hereto.

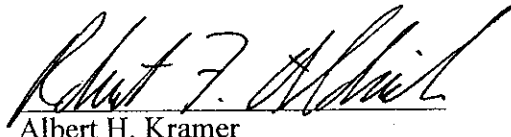
XII. RELIEF REQUESTED

147. APCC Services respectfully requests that the Commission find Defendant (i) in violation of Section 201(b) and Section 276(b) of the Act for its failure to pay the dial-around compensation it owes to the Represented PSPs for the Complaint Period, (ii) in violation of

Section 201(b) and Section 276(b) for its failure to comply with its tracking and reporting obligations under 47 C.F.R. § 64.1310(a), and (iii) in violation of Section 201(b) and Section 276(b) for its failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a). APCC Services respectfully further requests that the Commission (i) award damages in the amount of \$915,090.40 (including interest through January 31, 2009), plus additional interest through the date of payment at 11.25% per year, and (ii) order Defendant to come into compliance with all of its obligations under C.F.R. §§ 64.1300-1320.

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Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", written over a horizontal line.

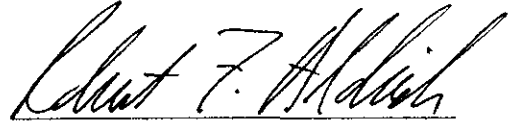
Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006
Tel. (202) 420-2200
Fax (202) 420-2201

Attorneys for APCC Services

Dated: February 9, 2009

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) APCC Services has paid the \$190.00 filing fee for each of the three defendants in the foregoing complaint (for a total of \$570.00) by means of a check signed by its counsel, Dickstein Shapiro LLP, and submitted simultaneously with the complaint, and (2) APCC Services' FRN is correctly stated in the complaint.

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Robert F. Aldrich

CERTIFICATE OF SERVICE

I hereby certify, I caused a copy of the foregoing Complaint and accompanying Exhibit volume to be served by hand delivery, by overnight courier, by fax and/or by e-mail, as indicated below, to the following for delivery on February 10, 2009:

Office of the Commission Secretary
(3 copies by hand)

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c/o U.S. Bank
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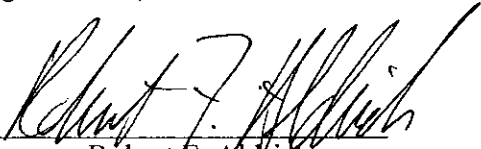
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